

Message Text

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ACTION PM-07

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C O N F I D E N T I A L WELLINGTON 2122

C O R R E C T E D C O P Y (P A R T W O)

EO 11652: GDS

TAGS: MARR, US, NZ

SUBJ: MT JOHN LEASE

REFS: (A) WELLINGTON 1493

(B) STATE 139450

1. FOL STUDY OF PROVISIO CONTAINED PARA 1, REFTEL B, WATKINS, MFA LEGAL DIVISION, HAS INFORMED EMBASSY PROPOSED CHANGE UNACCEPTABLE TO NGZ. GNZ POSITION PUT FORTH IN JULY 5 WATKINS LETTER, SALIENT POINTS OF WHICH FOLLOW WITH UNNECESSARY WORDS OMITTED: QUOTE: THE STATE DEPARTMENT SUGGESTED THAT PROVISIO SHOULD BE ADDED TO PARAGRAPH 20 OF DRAFT LEASE (WHICH REFERS TO LAND ACT 1948) TO EFFECT THAT LAND ACT 1948 SHOULD NOT DEROGATE FROM RIGHTS OF USG UNDER 9 JULY 1968 AGREEMENT. WE HAVE CONSIDERED AMENDMENT SUGGESTED AND WOULD LIKE TO MAKE FOL POINTS:

1) LAND ON WHICH TRACKING STATION LOCATED IS OF COURSE CROWN LAND AND AS SUCH ITS DISPOSITION GOVERNED BY TERMS OF LAND ACT 1948. DRAFT LEASE IS ACCORDINGLY GRANTED
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UNDER AND PURSUANT TO TERMS OF LAND ACT 1948. PARAGRAPH

20 OF DRAFT LEASE IS SIMPLY STATEMENT OF THIS POSITION. IT IS STANDARD PROVISION CONTAINED IN ALL LEASES GRANTED UNDER THAT ACT AND IT SIMPLY SAYS THAT TERMS OF THAT ACT WHICH ARE APPLICABLE TO SUCH LEASES SHALL APPLY IN THIS CASE.

2) IT WOULD BE INAPPROPRIATE TO WRITE INTO LEASE THE AMENDMENT SUGGESTED. LEASE, WHICH CONTAINS CONDITIONS ON WHICH MT. JOHN LAND IS BEING MADE AVAILABLE, TAKES ITS LIFE FROM LAND ACT 1948 AND RELATIONSHIP BETWEEN LESSOR AND LESSEE IS GOVERNED THEREFORE BY NEW ZEALAND DOMESTIC LAW. THE SUGGESTED AMENDMENT REALTES TO THE NEW ZEALAND GOVERNMENT'S TREATY OBLIGATIONS AND THIS IS FAIRLY A MATTER FOR DISCUSSION BETWEEN OUR TWO GOVERNMENTS. IT IS OF COURSE TRUE THAT IN NEW ZEALAND LAW DOMESTIC LAW TAKES PRECEDENCE OVER INTERANTIONAL TREATY OBLIGATIONS (UNLIKE THE POSITION IN YOUR OWN COUNTRY) AND BECAUSE OF THIS GNZ TAKES GREATEST CARE TO ENSURE THAT ITS DOMESTIC LAW CORRESPONDS TO AND IS CONSISTENT WITH ITS INTERNATIONAL TREATY OBLIGATIONS.

3) IN THIS PARTICULAR CASE IF ANY CONFLICT WERE DISCOVERED BETWEEN THE RIGHTS OF USG UNDER AGREEMENT OF 9 JULY 1968 AND APPLICATION TO THIS LEASE OF PROVISIONS OF LAND ACT 1948 WHICH APPLY TO LEASES GRANTED UNDER THAT ACT, I AM SURE THAT GNZ WOULD TAKE SUCH MEASURES AS WERE NECESSARY TO ENSURE ITS OBLIGATIONS TO USG UNDER 1968 AGREEMENT WERE CARRIED OUT. IN CONTEXT OF LAND ACT 1948, FOR EXAMPLE, THERE IS AN EXPRESS STATUTORY REQUIREMENT FOR LAND SETTLEMENT BOARD (WHICH GRANTS LEASES UNDER LAND ACT) TO GIVE EFFECT TO ANY DECISION OF GNZ IM RELATION TO THE EXERCISE OF THE BOARD'S FUNCTIONS AND POWERS. IN OTHER WORDS RIGHTS OF USG UNDER 9 JULY 1968 AGREEMENT WOULD BE FULLY PROTECTED. END QUOTE.

2. IN EFFORT MEET USG CONCERNS WATKINS HAS PROPOSED NEW PREAMBLE AS FOLLOWS : QUOTE: THIS DEED MADE THE --DAY OF -- 1974 BTWEEN HER MAJESTY THE QUEEN IN RIGHT OF NEW ZEALAND (HEREINAFTER REFERRED TO AS THE "LESSOR") OF THE ONE PART, CONFIDENTIAL

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AND THE UNITED STATES AIR FORCE (HEREINAFTER CALLED THE "LESSEE") OF THE OTHER PART WITNESSETH THAT WHEREAS THE GOVERNMENT OF NEW ZEALAND AND THE GOVERNMENT OF THE UNITED STATES CONCLUDED AN AGREEMENT ON 9 JULY 1968 BY WAY OF AN EXCHANGE OF NOTES CONCERNING THE PROVISION OF A FACILITY IN NEW ZEALAND FOR A UNITED STATES PROGRAMME RELATING TO SPACE VEHICLE TRACKING AND WHEREAS IN PURSUANCE OF THAT AGREEMENT OF 9 JULY 1968 A SATELLITE

TRACKING STATION WAS ESTABLISHED AT MT. JOHN ON LAND
LEASED FROM THE LESSOR BY THE UNIVERSITY OF CANTERBURY
AND SUBLEASED FROM THE UNIVERSITY OF CANTERBURY BY
THE LESSEE AND WHEREAS THE UNIVERSITY OF CANTERBURY HAS
AS FROM 1 NOVEMBER 1972 SURRENDERED TO THE LESSOR ALL
THE LAND CONTAINED IN THE AFOREMENTIONED SUBLEASE
AND WHEREAS FOR THE PURPOSES OF THAT AGREEMENT OF
9 JULY 1968 IT IS DESIRED TO MAKE PROVISION FOR THE
CONTINUED OPERATION OF THE SAID TRACKING STATION
AND WHEREAS THE LESSEE HAS REQUESTED THAT THIS LEASE BE
ISSUED FOR THIS PURPOSE. END QUOTE.

3. INCLUSION OF REFERENCE TO JULY 9, 1968 AGREEMENT
IN NEW PREAMBLE IS INTENDED TO PUT ALL PARTIES ON
NOTICE OF EXISTENCE OF 1968 EXCHANGE OF NOTES
THUS MAKING IT IMPOSSIBLE READ LEASE AS DOCUMENT
UNRELATED TO ORIGINAL AGREEMENT. WATKINS ALSO
ARGUES THAT ANY CLAIMS OR CONFLICTS ARISING OUT OF
LEASE WILL BE SETTLED EITHER UNDER PARA. 5 OF JULY 9,
1968 MOU OR BY DISCUSSIONS BETWEEN EMBASSY AND MFA.
HE FORESEES NO CIRCUMSTANCES IN WHICH USAF WOULD
BE PUT IN POSITION OF HAVING TO GO BEFORE NZ COURTS.

4. ACTION REQUESTED: RECOMMEND THAT APPROVAL BE GIVEN
TO ACCEPT DRAFT LEASE FORWARDED REFTEL A AS AMENDED WITH
PREAMBLE PROVIDED PARA 2 ABOVE. I BELIEVE THIS WILL PROTECT
OUR INTERESTS AND THAT IT IS THE BEST WE CAN GET.
SELDEN

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